学校编码：10384　　分类号＿＿＿＿密级＿＿＿＿

学　　号：X200108029　　UDC＿＿＿＿＿＿＿＿＿＿＿＿

学 位 论 文

民事诉讼自认规则研究

Study On The Admission Rule In The Civil Procedure

高 长 江

指导教师姓名:　齐 树 洁　教 授

申请学位级别:　硕　　士

专 业 名 称:　法 律 硕 士

论文提交时间:　2004 年 10 月

论文答辩日期:　2004 年　　月

学位授予单位:　厦 门 大 学

学位授予日期:　2004 年　　月

答辩委员会主席＿＿＿＿＿＿

评　　阅　　人＿＿＿＿＿＿

2004 年 10 月

厦门大学学位论文原创性声明

兹呈交的学位论文，是本人在导师指导下独立完成的研究成果。本人在论文写作中参考的其他个人或集体的研究成果，均在文中以明确方式标明。本人依法享有和承担由此论文而产生的权利和责任。

声明人（签名）：

年　　月　　日

内 容 提 要

自认规则是民事诉讼法上的一项重要的证据法则。大陆法系和英美法系国家对此都有较为完善的规定。相比之下，我国民事诉讼立法对自认规则却未作出规定，虽然最高人民法院于 2001 年通过的《关于民事诉讼证据的若干规定》对此有所涉及，但其规定不仅过于原则和简单，而且在内容上亦存在着不协调甚至矛盾之处，可操作性不强，且仅限于司法解释而未上升至立法层面并形成为一种制度，导致在实践中未能发挥其应有的功能。同时，从诉讼理论上来看，我国很少有学者对之加以系统论述，理论研究明显滞后，对某些问题也未能达成共识。本文结合国内外的理论和实践，对自认规则的若干问题进行比较深入的探讨，除前言和结语外，正文分为四章。

第一章：对自认规则诸如自认的概念及其构成要件、自认的属性、理论基础进行概述和界定。自认是指在民事诉讼中，一方当事人就对方当事人所主张的不利于己的事实指称以言词或行为向主审法官承认其为真实的声明或表示。自认的成立须具备六个要件。从本质上讲，诉讼上的自认具有证据规则的性质。各国证据规则将自认规则纳入其规制范围，乃有其深刻的理论基础。

第二章：关于诉讼上自认的效力的论述，即诉讼上自认具有免除当事人举证，拘束当事人及法院的效力。自认的效力不仅及于一审法院，而且及于二审乃至再审法院。但自认的效力并不是绝对的，为了维护社会公共利益，或出于诉讼政策的必要考虑等，各国在立法上或学理上往往认为应当对自认的效力加以必要的限制，或者作为自认规则的一种例外，而使自认不能发生效力或者生效后又失效；以及对明示自认可以撤销、默示自认予以追复的问题。

第三章：对两大法系的立法及学理进行比较研究，并对自认的类型展开分析。虽然大陆法系和英美法系国家对自认规则都有较为完善的规定，两大法系关于自认的立法及学理具有共同或相似的特点，但又各具特色。同时，自认依不同的标准可分为不同的类型，明确这些自认的类型，对于理解自认的本质及

其运用是十分必要的。

第四章：根据我国当前自认规则的现状，剖析其缺陷和不足，并提出一些完善对策。自认是一项古老的法则，而我国的《民事诉讼法》却没有规定。对此，最高人民法院的《关于民事诉讼证据的若干规定》虽然作了些规定，但是，其完备性、准确性都存在不足，使得自认规则在审判实践中的运用大打折扣，自认规则所具效能和作用并未得到有效的发挥和利用。因此，我们应进一步借鉴国外及台湾地区关于自认的学理、判例及立法经验，重构和完善我国的自认规则。

关 键 词：民事诉讼；证据制度；自认规则

ABSTRACT

Admission rule is an important evidence rule of civil procedure law, which is well regulated in the countries of the continent law system and Anglo-American law system. In contract with them, we haven't regulated the admission rule of civil procedure law. Although *The Regulations Relating To The Civil Evidence Rules*, which was stipulated by the Supreme People's Court, has regulation on it, the regulation is too principled and easy and isn't coordinated, even contradictory in certain contents. Besides, we just have regulation on the admission rule in the judicial interpretation and haven't made about it, so it hasn't produced its function in practice. Meanwhile, in the theory of lawsuit, few scholars in China have formulated it; they haven't agreed on some questions, so theoretical study on it is lagging far behind. Combining theories with practice at home and abroad, the thesis deeply analyzes certain aspects about the admission rule. It is divided into four chapters, besides preface and conclusion.

Chapter one makes a definition of admission rule, connotation, character, theoretical foundation of it. The admission rule of civil procedure refers to a kind of stating station that one party affirms definitely unfavorable legal facts provided by his oppoisition to himself. It has six elements, and has the character of evidence rule in its nature. Many counties have stipulated it in the evidence rule because of its profound foundation.

Chapter two analyzes the admission effect of the civil procedure. It exempts parties from onus of proof, and restricts the court and parties .It has an effect on the civil procedure at first instance, the civil procedure at second instance and the new trial. However, its effect isn't absolute. Considering the public interest and lawsuit policy and so on., each country thinks that it is necessary to put a limit on the admission rule, lawmakers regulate that it doesn't put into effects, or it takes effect then causes to be in effect, and that the express admission could be discharged and the implied admission could be disputed.

Chapter three makes some research the admission rule of the two legal systems in the law-making and theory, and analyzes its classification. The continental law system and the Anglo-American law system have clear regulations about admission rule, and they have some characters in the law-making and theory in common, but they have respect characters. According to different standards, admission rule has different classification. To make these classifications clear, it is necessary to understand its nature and use it.

Chapter four analyzes defects and shortcomings of the present admission rule in China, and put forward some perfectible measures. The admission rule is an ancient rule, but it isn't stipulated in the civil procedure law in China. *The Regulations Relating To The Civil Evidence Rules* of the Supreme People's Court has some regulations about it, however, the maturity and accuracy isn't enough, which makes it impossible to yield its effect in practice. Therefore, drawing lessons from the theory, cases and law-making experiences at home and abroad and Taiwan, we should reconstruct and perfect the admission rule in China.

Key words: Civil Procedure; Evidence System; Admission Rule

目 录

CONTENTS

前 言

作为一个与刑事诉讼之被告人的自白相对应的术语，自认（英文为admission）是民事诉讼法上的一项重要证据法则，认可并善于运用自认规则，不仅可以节省时间，提高审判效率，达到诉讼经济的目的，而且能够更好地实现诉讼公正的目的。在大陆法系的德国、日本及我国台湾地区的民事诉讼中，自认规则已有成熟的理论和完善的立法；在英美法系国家中，自认作为证据法中的一部分也得到了长足的发展。相比之下，我国尽管近年来学界对于自认理论研究已有相当的突破，但是，由于在整个民事诉讼模式上，尚未实现从职权主义向当事人主义的转变，对于法院和当事人两者在整个诉讼过程中的地位和作用，还是未能合理且符合民事诉讼规律的界定，至少在实务界的观念中，法院职权还是不能正确且合理地“认识”与“受容”民事诉讼中的自认。[①]虽然最高人民法院于 2001 年 12 月通过的《关于民事诉讼证据的若干规定》（以下简称《民事证据规定》）第 8 条和第 74 条对此作了相关规定，但仅为举证责任的一种例外，显失全面，且法条之间的内容亦存在矛盾和不相协调之处，可操作性不强。同时，仅限于司法解释而未上升至立法层面并形成为一种制度，导致在实践中未能发挥其应有的功能。审判实践中普遍存在着法官不敢或不愿以当事人的自认为依据判决的现象，甚至作出与自认相反的判决。这都使得自认规则在审判实务中的运用大打折扣，自认规则的功能远未得到发挥。

在将公正与效率作为审判工作永恒主题的今天，尤其是在我国加入 WTO 后，全面树立司法新理念，深化司法改革的浪潮中，通过立法确定科学、完整的自认规则，不仅是程序公正的内在要求，而且是提高诉讼效率和适应涉外诉讼，与世界发展潮流相一致的需要。正鉴于此，笔者在此欲在前人探索的基础

① 张卫平.外国民事证据制度研究[M].北京:清华大学出版社,2003.326.

上，结合审判实践对自认规则诸如自认的概念及其构成要件、自认的理论基础、自认的属性、自认的效力及其类型等进行理论分析和界定，并对两大法系关于自认的立法及学理展开比较研究，根据我国当前的立法及实践之现状，剖析其缺陷和不足，并提出一些完善对策，以求教于同仁，以期对我国的自认规则理论研究及其重构有所裨益。